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### **EUROPEAN ADMINISTRATION OF THE DANUBE IN HUNGARY**

#### **Summary**

The European Union (EU) is determined to find integrated solution for common problems like environmental challenges and water management. Finding solution for common challenges requires trust and cooperation from every actor involved. This is the basic principle of EU on the question of water management. Meanwhile, an effective handling of the same problem requires strong cooperation and unity in execution that is the adoption of the same goals is not enough, the administration also needs some kind of interrelation. However, the difference in competences of EU legislation on these different but strongly attached legal areas can lead to an insignificant result or just degrade the efficiency of the cooperation.

The paper aims to reveal the mass lofty goals and their realisation in the view of administrative reality and future prospects in a Hungarian point of view.

**Keywords:** Danube, multi-level governance, European administration, water management, WFD

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## Introduction

The EU is a land of shared waters.<sup>1</sup> As international waterways run across administrative borders, they establish connection between regions and States but also make management difficult and challenging. There is a need for ‘horizontal’ cooperation between States and non-State actors and actors on the same level of management so as cooperation across different sectors whose matching point is the river such as environmental protection, agriculture or energy. Beside, there is also a need for ‘vertical’ cooperation, between various levels of administration from supranational to local one. Under this scope, the EU established rules to achieve ‘good status’ for European rivers, lakes and groundwater by 2015.

The *Water Framework Directive* (WFD)<sup>2</sup> aims to regulate global water issues by protecting all forms of water (inland, surface, transitional, coastal and ground), restoring the ecosystems in and around these bodies of water, reducing pollution in water bodies and guaranteeing sustainable water usage by individuals and businesses. Meanwhile, an effective handling of the same problem requires strong cooperation and unity in execution that is the adoption of the same goals is not enough, the administration also needs some kind of interrelation. However, the different legislative competences of the EU on these different but strongly attached legal areas can lead to an insignificant result or just degrade the efficiency of the cooperation.

The paper aims to reveal the mass lofty goals and their realisation in the view of administrative reality and future prospects along with Hungarian aspects.

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<sup>1</sup> Joining Forces for Europe’s Shared Waters: Coordination in international river basin districts. Water Notes on the Implementation of the Water Framework Directive. European Commission (DG Environment) 2008, [www.ec.europa.eu/environment/water/participation/pdf/waternotes/water\\_note1\\_joining\\_forces.pdf](http://www.ec.europa.eu/environment/water/participation/pdf/waternotes/water_note1_joining_forces.pdf) (09.12.2015.)

<sup>2</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22 December 2000 [WFD].

## Water governance and water management: the EU solution

### The nature of multi-level governance in the EU

In the EU, for cross-border issues, the concept of regionalism is for breaking the cage of territoriality for successful handling the problems of a homogenous territory divided by State borders, in the present case, the common problems of a transboundary river. It helps to approximate the *top down* and *bottom up* policy and perspectives of one issue putting on emphasises on the fact that the final executors of the provisions, the national authorities which meet the challenges and primarily responsible for policy implementation and monitoring, shall also participate in decision-making to help it with direct experiences of the actual situation.<sup>3</sup> For that purpose, multi-level governance (MLG) describes the dispersion of authoritative decision making. ‘Multi-level’ means the increased vertical interdependence of actors operating at different territorial levels, while ‘governance’ refers to the growing horizontal interdependence between governments and nongovernmental actors.<sup>4</sup>

The EU itself presupposes the system of MLG. While nation States remain central actors in policy making, decision-making competencies are shared by actors organized at different territorial levels. This collective decision-making involves a significant loss of control for individual national governments as subnational actors operate in both national and supranational arenas, creating transnational networks in the process. However, the executive power, the realisation of commonly accepted and legislated aims still relies on national executives.<sup>5</sup> In the same time, national executive structures are not harmonised, the EU legislative competence extends only to carry out actions to support, coordinate or supplement the actions of the Member States in the areas of

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<sup>3</sup> S. Piattoni, *The Theory of Multi-level Governance Conceptual, Empirical, and Normative Challenges*, Oxford University Press, Oxford 2010, p. 9; A. Lagendijk, *Regionalisation in Europe. Stories, Institutions and Boundaries*, in: *B/ordering Space*, ed. H. van Houtum, O. Kramsch, W. Zierhofer, Ashgate, Aldershot 2005, p. 80–81.

<sup>4</sup> B.G. Peters, J. Pierre, *Multi-level Governance and Democracy: A Faustian Bargain?*, in: *Multi-level Governance*, eds. I. Bache, M. Flinders, Oxford University Press, Oxford 2004, p. 95–96; S. Piattoni, *The Theory...*, p. 177.

<sup>5</sup> B.G. Peters, J. Pierre, *Multi-level Governance...*, p. 96; M. Finger, L. Tamiotti, J. Allouche, *Introduction: Conceptual Elements*, in: *The Multi-Governance of Water: Four Case Studies*, eds. M. Finger, L. Tamiotti, J. Allouche, State University of New York Press, New York 2006, p. 4; Zs. Fejes, *Az önkormányzatok alkotmányos helye és szerepe a határon átnyúló együttműködések rendszerében*, “Kül-Világ” 2010, Vol. 10, No. 4, p. 91.

administrative cooperation<sup>6</sup> but no Member State shall be obliged to accept such support. Although, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish the necessary measures to this end, but it shall exclude any harmonisation of the laws and regulations of the Member States.<sup>7</sup> Meanwhile, the effectiveness of legislation relies on the execution of its 28 Member States by 28 different administrative structures, so this is what makes MLG so challenging.

### **EU way of MLG as a possible solution for environmental issues**

Sustainable environmental protection stands as the most challenging features in an ecologically interdependent world as acting unilaterally is rarely an effective response to the problems that transgress administrative boundaries. As “[s]tates are too large to solve some local and regional problems, and too small to address some global challenges”<sup>8</sup> collective response and solution is presupposed. However, at the beginning of the European integration there were no environmental issues on the agenda, a few decades later the EU became one of the strongest and most progressive environmental policy maker recognizing that water is not national but regional or international in nature. Issues related to its physical, chemical, geologic, natural and environmental aspects need integrated solution which involves a variety of State and non-state actors at different levels of governance forming a MLG system.<sup>9</sup>

The EU, being the engine of this system, has a significant advantage over the other type of cooperations: it has legislative competences over Member States. So, not only the articulation of common aims but normative force can be ensured to achieve results as EU has shared competence on environmental issues. *Water governance*, namely refers to the set of administrative systems with a core focus on formal and informal institutions thus primarily it is upon

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<sup>6</sup> Consolidated Version of the Treaty on the Functioning of the European Union. OJ C 326/47 26.10.2012. [TFEU] Art. 6 (g).

<sup>7</sup> *Ibidem*, Art. 197 (2).

<sup>8</sup> P. Mische, *National Sovereignty and Environmental Law*, in: *Biodiversity and International Law. The Effectiveness of International Environmental Law*, ed. Simone Bilderbeek, IOS Press, Amsterdam 1992, p. 110.

<sup>9</sup> See J. Fairbrass, A. Jordan, *Multi-level Governance and Environmental Policy*, in: *The Multi-Governance of Water: Four Case Studies*, eds. M. Finger, L. Tamietti, J. Allouche, State University of New York Press, New York 2004, p. 147–149.

the State and its willingness to cooperate. Basically, this has always been the sphere of international relations: concluding agreements and holding up to the common targets. However, there exists a classical international regime for water governance which gives wide margins of manoeuvring between the absolute territorial sovereignty and the absolute territorial integrity principles.<sup>10</sup> As long as States can select the regimes to belong to, the lack of participation would weaken or impede the desired aims of any efforts. As the participation and action of non-State actors are also depend upon States decision, the key rests in the choice of the sovereign State. *Water management*, on the other hand, is a more specific cooperation form which covers the operational activities for a specific target. It is an institutional and policy framework that foster transparency, accountability, and co-ordination are thus part of good water governance, while delivering water or installing improved water services are part of water management, thus the two cooperation forms shall meet and linked together. The key challenges, in fact, are institutional and territorial fragmentation and badly managed multi-level governance, but also limited capacity at the local level, unclear allocation of roles and responsibilities and questionable resource allocation.<sup>11</sup>

The EU, recognizing that the best model for fighting the different aspects of water related environment problems, established a *single system of water management*, which replaces the former directives and actions for combatting water pollution,<sup>12</sup> with a concept that the whole river basin is a natural, geographical and hydrological unit despite administrative and political boundaries, so as it links the EU with neighbouring non-EU States.

### **Water Framework Directive: a tool for creating and functioning MLG**

In 2000, WFD established a framework for EU action in the field of water policy while it declares its consistency with the relevant obligations under

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<sup>10</sup> J. Linnerooth, *The Danube River Basin: Negotiating Settlements to Transboundary Environmental Issues*, "Natural Resources Journal" 1990, Vol. 30, p. 643–644.

<sup>11</sup> Water Governance in OECD Countries: A Multi-level Approach, OECD Studies on Water, OECD Publishing [www.dx.doi.org/10.1787/9789264119284-en](http://www.dx.doi.org/10.1787/9789264119284-en) (21.12.2015) [OECD Studies], p. 17.

<sup>12</sup> Early European water legislation began with standards for rivers and lakes used for drinking water abstraction in 1975, and culminated in 1980 in setting binding quality targets for drinking water. It also included quality objective legislation on fish waters, shellfish waters, bathing waters and groundwaters. Introduction to the new EU Water Framework Directive, [www.ec.europa.eu/environment/water/water-framework/info/intro\\_en.htm](http://www.ec.europa.eu/environment/water/water-framework/info/intro_en.htm) (21.12.2015).

international conventions on water protection and management, notably the United Nations Convention on the protection and use of transboundary water courses and international lakes, approved by Council Decision 95/308/EC and any succeeding agreements on its application.<sup>13</sup> Its success relies on close cooperation and coherent action at EU, Member State and local level as well as on information, consultation and involvement of the public, including users.<sup>14</sup> The obligations deriving from the WFD, in fact, differ according to whether the river basin district in question is national or international. For international river basin districts, the Member States concerned are required to identify the area and set up appropriate administrative structures for them<sup>15</sup> and take further steps for cooperation<sup>16</sup> and for that purpose, use existing structures stemming from international agreements.<sup>17</sup>

It requires that all existing technology-driven source-based controls must be implemented as a first step in the river basin, while it also sets out a framework for developing further controls. The list of priority substances for action is determined on the basis of risk at EU level, then the design of the most cost-effective set of measures to achieve load reduction of those substances, taking into account both product and process sources. It also co-ordinates all the environmental objectives in existing legislation, and provides a new overall objective of good status for all waters. To achieve that, the *river basin management plan* (RBMP) is a detailed account of how the objectives are to be reached within the timescale required. Then it is essential that the process is open to the scrutiny of those who will be affected. Enforceability is also enhanced by transparency in the establishment of objectives, the imposition of measures, and the reporting of standards. Transparency increases „the care Member States will take to implement the legislation in good faith, and the power of the citizens to influence the direction of environmental protection, whether through consultation or, if disagreement persists, through the complaints procedures and the courts.”<sup>18</sup>

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<sup>13</sup> WFD Preamble (35).

<sup>14</sup> WFD Preamble (14).

<sup>15</sup> WFD Art. 3.4.

<sup>16</sup> WFD Art. 3.5.

<sup>17</sup> Case C-32/05 *Commission of the European Communities v. Grand Duchy of Luxembourg*, OJ C 82, 02.04.2005, p. 67.

<sup>18</sup> Introduction to the new EU Water Framework Directive..., [www.ec.europa.eu/environment/water/water-framework/info/intro\\_en.htm](http://www.ec.europa.eu/environment/water/water-framework/info/intro_en.htm) (21.12.2015).

The Member States identifies competent authorities to perform duties of WFD<sup>19</sup> and for river basins extending beyond the boundaries of the EU; Member States should endeavour to ensure the appropriate coordination with the relevant non-member States.<sup>20</sup>

## The Danube in the EU system of MLG

The Danube Basin covers over 2,000 km<sup>2</sup> in 19 European States<sup>21</sup> meaning that 19 different management structures and law regulate an area which, in fact, geologically forms one single unit. International cooperation related to navigation and transportation issues has a long history dated back to 1856<sup>22</sup> but in the second part of the 20<sup>th</sup> century environmental problems has started to dominate in interstate relations.<sup>23</sup> The Danube is subject to many international conventions, treaties, cooperation programs for riparians and States of the Danube river basin but their membership and those participating in such cooperation is diversified. WFD aims to pool these existing international efforts to identify common goals and targets so as the tools to achieve them. For that aim, water management has three levels of coordination under the WFD system.<sup>24</sup>

(1) *International, basin-wide level.* The first multilateral legal instrument after bilateral agreements, political declarations and other soft law initiatives was the *Danube Convention* (DRPC) in 1994. Today 14 riparian States and the EU are

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<sup>19</sup> WFD Art. 3.6.

<sup>20</sup> WFD Art. 3.2–3; 7.

<sup>21</sup> ICPDR: Countries of the Danube River Basin, [www.icpdr.org/main/danube-basin/countries-danube-river-basin](http://www.icpdr.org/main/danube-basin/countries-danube-river-basin) (09.12.2015.); S. McCaffrey, *The Danube River Basin*, in: *The Multi-Governance of Water. Four Case Studies*, eds. M. Finger, L. Tamiotti, J. Allouche, State University of New York Press 2006, p. 79.

<sup>22</sup> S. Gorove, *Law and Politics of the Danube: an Interdisciplinary Study*, The Hague, Martinus Nijhoff 1964, p. 11–22; J.L. Wescoat Jr, *Main Currents in Early Multilateral Water Treaties: A Historical-Geographic Perspective 1648–1948*, “Colorado Journal of International Environmental Law and Policy” 1995, Vol. 7, No. 1, p. 44, 49–70.

<sup>23</sup> In 1977 the World Health Organization warned that pollution controls on the Danube were not adequate. World Health Organization. Pilot Zones for Water Quality Management, HUN/PIP 00/S014, Copenhagen, 1977; J. Linnerooth, *The Danube River Basin...*, p. 634.

<sup>24</sup> Danube River Basin District Management Plan, 14 Dec. 2009, [www.icpdr.org/main/activities-projects/danube-river-basin-management-plan-2009](http://www.icpdr.org/main/activities-projects/danube-river-basin-management-plan-2009) (20.12.2015) [DRBMP] p. 3; C. Gasparotti, *A Modern Approach of Water Management in the Danube River Basin*, “Management & Marketing Challenges for the Knowledge Society” 2012, Vol. 7, No. 4, p. 782–783.

parties to it for the protection and sustainable management of not only the river itself but as a complex solution for water quality challenges, its whole area, the Danube River Basin.<sup>25</sup> The *International Commission for the Protection of the Danube River* (ICPDR) was established in 1998 to fulfil its objectives and be a forum for State delegations to coordinate and cooperate on important water management issues to elaborate proposals and recommendations addressed to the contracting Parties.<sup>26</sup> It is also facilitating platform for implementation of the WFD and the EU Flood Directive. Thus since 2009 the *Danube River Management Plan* (DRBM) provides a roadmap for all the activities to the river and its environment. Contracting parties to the ICPDR, even without EU membership, have accepted the goals of the WFD, moreover, Italy, Switzerland, Poland, Albania and the Former Yugoslav Republic of Macedonia also co-operate with the ICPDR under the scope of WFD.<sup>27</sup> In fact, the operation in the framework of the ICPDR creates the legal and political basis for transboundary water management in the DRB. It also co-work with the *EU Strategy for the Danube Region* (EUSDR) endorsed by the European Council in 2011 to be a forum to strengthen collaboration and communication within several Danube related issues among the concerned States to increase competitiveness of the area.<sup>28</sup> Cooperation under ICPDR and EUSDR is in the same direction, but the first provides policy and strategy frame for action in a broad water competence, the latter provides additional political awareness and wider access to funding sources,<sup>29</sup> and it also takes part in the formulation

<sup>25</sup> 11 States and the Community signed the DPC in 1994, but nowadays it has 15 participants with all the States – Austria, Bulgaria, Croatia, the Czech Republic, Germany, Hungary, Moldova, Romania, Slovakia, Slovenia and Ukraine – belonging to the Danube River Basin and the European Union. See Participants, [www.ecolex.org/ecolex/ledge/view/RecordDetails?id=TRE-001207&index=treaties](http://www.ecolex.org/ecolex/ledge/view/RecordDetails?id=TRE-001207&index=treaties) (09.12.2015).

<sup>26</sup> Convention on Cooperation for the Protection and Sustainable Use of the Danube River. Sofia, 29 Jun. 1994 [22 Oct. 1998] OJ L 342, 12.12.1997, p. 19–43 [DRPC] Art. 18. The ICPDR presidency is passed on from one Member State to another year by year in alphabetical order but the work is in fact done by expert groups, panels of specialists from the ICPDR Member States and the 23 official observers. It englobes the work started under the Bucharest Declaration DRPC Annex IV. Art. 1–2; 6; ICPDR: Observers.

<sup>27</sup> Danube Basin: Facts & Figures, [www.icpdr.org/main/danube-basin/countries-danube-river-basin](http://www.icpdr.org/main/danube-basin/countries-danube-river-basin) (21.12.2015), p. 20.

<sup>28</sup> DRBMP, 1.2.1.

<sup>29</sup> B.G. Peters, J. Pierre, *Multi-level Governance...*, p. 83; B. Wolfslehner *et al.*, *Potentials of the Danube Strategy for a Sustainable Development in Central and Eastern Europe*, “Interdisziplinäre Projektstudie” WS 2011/2012 UBRM, 2012, [www.boku.ac.at/fileadmin/data/H05000/H12000/Attachments\\_Newsletter/13\\_2012-03\\_4\\_Potentials\\_of\\_the\\_Danube\\_Strategy.pdf](http://www.boku.ac.at/fileadmin/data/H05000/H12000/Attachments_Newsletter/13_2012-03_4_Potentials_of_the_Danube_Strategy.pdf) (20.12.2015), p. 93; Action Plan Accompanying document to the Communication from the



of EUSDR priority actions related to environmental issues. Altogether, under the sphere of ICPDR different kind of international obligations and requirements can be compared and discussed and it also regroups EU Member States with other States (see the chart below), so as it involves NGOs, public participation and the stakeholder groups.<sup>30</sup>

Table 1. States and their organisational affiliation concerning Danube

State	Riparian State	Belong to the Danube River Basin	ICPDR member State	WFD-DRBMP	EU Member State
Albania		✓		✓	
Austria	✓	✓	✓	✓	✓
Bosnia Herzegovina		✓	✓		
Bulgaria	✓	✓	✓	✓	✓
Croatia	✓	✓	✓	✓	✓
Czech Republic		✓	✓	✓	✓
Germany	✓	✓	✓	✓	✓
Hungary	✓	✓	✓	✓	✓
Italy		✓		✓	✓
Macedonia		✓		✓	
Moldova	✓	✓	✓		
Montenegro		✓	✓		
Poland		✓		✓	✓
Romania	✓	✓	✓	✓	✓
Serbia	✓	✓	✓		
Slovak Republic	✓	✓	✓	✓	✓
Slovenia	✓	✓	✓	✓	✓
Switzerland		✓		✓	
Ukraine	✓	✓	✓		
Total	10	19	15	14	11

Source: author.

(2) *National level* is managed by competent authorities and and/or the internationally coordinated sub-basin level for selected sub-basins (Tisza, Sava, Prut and Danube Delta).<sup>31</sup> To implement the requirements of the WFD, Member States are called on to establish competent authorities but no rules exist to shape their cooperation. This wide discretion has led to a diverse picture of water

Commission to the European Parliament, the Council, the European Economic And Social Committee and the Committee of the Regions European Union Strategy for the Danube Region, Brussels, SEC(2010) 1489; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Union Strategy for Danube Region, Brussels, 08.12.20010. COM(2010) 715, p. 3, DRBMP, p. 93.

<sup>30</sup> DRBMP, p. 93.

<sup>31</sup> DRBMP, p. 3.

management competences between administrative bodies in border regions across Europe.<sup>32</sup> If a transboundary issue emerges, usually it is treated on roof level which means that it is pushed up to ministerial level or to ad hoc committees involving at least the representatives of the public administration sector. This latter certainly decolorise the borders between national and roof level but the direct communication between the competent authorities would be the quickest and most effective solution to exchange the necessary information and collaborate on the same issue. The margins of the frames of such kind of cooperation depend solely on the competence given to the authorities by its States. The cooperation and transboundary contact between decentralized government bodies have in fact a long history in Europe mainly since the 1980 Madrid Convention;<sup>33</sup> although the EU has elaborated its own frames for different kind of public authority cooperation forms, networks and mechanisms.<sup>34</sup> The strongest legal instrument designed to facilitate and promote cross-border, transnational and interregional cooperation is the *European Grouping for Territorial Cooperation* (EGTC) because this entity has legal capacity. It may regroup regional and local authorities and other public bodies from different Member States,<sup>35</sup> it can manage its own budget; may have its own staff; acquire property, purchase; issue legal proceedings and last but not least it may apply for EU funding on its own.<sup>36</sup> The limit of competences is still in the hands of the government as the agreement establishing an EGTC is based on interstate treaties concluded between the governments of the States whose bodies are willing to cooperate in such form. Furthermore, members – authorities, self-governments, and other bodies – can only assign tasks to an EGTC, which fall within their competences under national law.

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<sup>32</sup> A.M. Keessen, J.J.H. van Kempen, H.F.M.W. van Rijswijk, *Transboundary River Basin Management in Europe. Legal Instruments to Comply with European Water Management Obligations in Case of Transboundary Water Pollution and Floods*, "Utrecht Law Review" 2008, Vol. 4 No. 3. p. 146–147.

<sup>33</sup> European Outline Convention on transfrontier co-operation between territorial communities or authorities, Madrid, 21 May 1980. 1272 UNTS 61.

<sup>34</sup> See, E. Csatlós, *Effect of EU Law on National Administration with a New Input of Fundamental Rights Protection*, in: *Harmonisation of Serbian and Hungarian Law with the European Union Law*, ed. K. Ranko, Thematic Collection of Papers Vol. III, Faculty of Law Novi Sad Publishing Center, Novi Sad 2015. p. 575–579.

<sup>35</sup> Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation. OJ L 210 of 31.7.2006. [EGTC], Art. 3.

<sup>36</sup> Zs. Fejes, *Az önkormányzatok...*, p. 41.

(3) *Sub-basin* level is defined as management units in the national territory. In fact, due to the size and the complexity of the basin, the ICPDR and the Danube States decided to work at different geographic scales and in particular via sub-basins.<sup>37</sup>

### **Hungary's Participation in the MLG of Danube administration**

The entire territory of Hungary is situated in the middle of the DRB and its *national river basin management plan* (NRBMP) involves 3 levels: national, meaning the whole country, then 4 sub-basins (River Danube, River Tisza, River Dráva and Lake Balaton) and 42 planning sub-units.<sup>38</sup> The NRBMP was adopted by Government Decisions No. 1042/2012 (II. 23), which has legally binding effects only on public authorities,<sup>39</sup> the legal value is given to the RBMP by other laws that provide direct reference to the RBMP, just like in most of the Member States.<sup>40</sup>

#### **Hungarian participation in the roof level of Danube management coordination and below**

Hungary was a founding member of the ICPDR, so was one of the main initiators of the EUSDR and that of the recent *Danube transnational programme* launched in 2014. This latter focuses on the same geographical area as the EUSDR but represent very different instruments, principles and levels and it will be implemented by joint management structures, such as the *Managing Authority*, *Joint Secretariat*, *Certifying Authority* and *Audit Authority*, which is set up in Budapest, in accordance with the decision adopted in July 2013 by the Programming Committee. Furthermore, the Managing Authority and the Joint Secretariat is established in an integrated manner under the principle of simplification and transnationality, as an autonomous unit of the *Hungarian Office*

<sup>37</sup> DRBMP, p. 3.

<sup>38</sup> Sz. Szilagy, A.G. Gajdics, *Transboundary Watershed – Joint Legal Action for Danube Implementation of the Water Framework Directive – an Overview of the Hungarian, Croatian, Serbian and Slovenian Situation*, “Environmental Management and Law Association” 2010, [www.emla.hu/aa2.10.0/img\\_upload/f1b7fd0e4cde967799ab3c249bb8f4f4/EU\\_Water\\_Framework\\_Directive\\_final.pdf](http://www.emla.hu/aa2.10.0/img_upload/f1b7fd0e4cde967799ab3c249bb8f4f4/EU_Water_Framework_Directive_final.pdf) (20.12.2015), p. 24–25.

<sup>39</sup> Act CXXX of 2010 on legislation procedure, Art. 23(1)–(3).

<sup>40</sup> COM(2012) 670, p. 40.

for National Economic Planning.<sup>41</sup> The function of the Certifying Authority is exercised by the *Hungarian State Treasury*, and the *Directorate General for Audit of European Funds* (EUTAF) will act as the *Audit Authority*.<sup>42</sup> As it is just facing the start, it is still not clear what extra it adds in comparison to the EUSDR which is an EU macro- regional strategy, but hopefully this institutional preparedness forecasts a systematic and effective cooperation among States within.

### National level of Danube management

Hungary's system of public administration has changed a lot since 2010. Since 6<sup>th</sup> June 2014 the *Ministry of Interior*, in particular its *River Basin Management and Water Conservation Department* is responsible for all Danube related questions from the WFD to the representation in ICPDR<sup>43</sup> except for the governmental tasks of the Danube Strategy which is coordinated by the *Ministry of Foreign Economic Relations and Foreign Affairs*<sup>44</sup> therefore the former fragmentation of central administrative tasks was eliminated. The responsible organisation for the preparation of national RBMP and the co-ordination of national planning process is the *Central Directorate for Water and Environment*.<sup>45</sup> However, on other issues related to water management, serious changes occurred in 2014.

Since 2010, in Hungarian public administration there is a tendency for integrating decentralised regional organs into a general organisation existing in every county (19) and in the capital. These Government Offices has general

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<sup>41</sup> Since then, it was abrogated and its tasks were transferred to the Prime Minister's Office. See, Government Decree No. 326/2014 (XII. 15) on the elimination of National Economy Planning Bureau.

<sup>42</sup> Government Decree No. 1680/2013 (IX. 30) on common tasks concerning setting up the institutional system of the Danube transnational cooperation program; Danube Transnational Programme – New transnational cooperation programme for 2014–2020. Office for National Economic Planning, available at: [www.nth.gov.hu/en/activities/european-territorial-cooperation/danube-transnational-programme-new-transnational-cooperation-programme-for-2014-2020](http://www.nth.gov.hu/en/activities/european-territorial-cooperation/danube-transnational-programme-new-transnational-cooperation-programme-for-2014-2020) (20.12.2015).

<sup>43</sup> Order of the Minister of Interior 15/2014 (IX. 5) on organizational and operational rules of the Ministry of Interior.

<sup>44</sup> Government Decree 152/2014 (VI. 6) on responsibilities and powers of the members of the Government.

<sup>45</sup> Commission Staff Working Document. Member State: Hungary. Report from the Commission to the European Parliament and the Council on the Implementation of the Water Framework Directive (2000/60/EC) River Basin Management Plans. Brussels, 14.11.2012. COM(2012) 670 HU final, p. 3–4.

jurisdiction over the county (and the capital) and the different sectors of formerly independent decentralised agencies regrouped. In this spirit, from 10<sup>th</sup> September 2014 authority tasks were transferred to the *National Directorate General for Disaster Management* by Government Decree 223/2014 (IX. 4). Therefore, the *General Directorate of Water Management* that was formerly a part of the *Central Directorate for Water and Environment* is now under the direction of the *Central Directorate of Water Management*. So for both the *General Directorate of Water Management* and the *National Inspectorate for Environment, Nature and Water* concerning its competences for authority tasks for water management,<sup>46</sup> the legal successor is the *National Directorate General for Disaster Management*. Due to this integration, now the regional offices of NIENW and CDWE all belong to the regional offices of the *Central Directorate of Water Management*. The regional offices of *National Inspectorate for Environment, Nature and Water* were integration into the organisation of county government offices and kept its competences as *special authority* in several issues.<sup>47</sup> Under the existing administrative procedure law, the special authority shall provide an assessment in connection with issues for which it has competence in administrative actions, or failing this it is conferred under its competence by an act or government decree.<sup>48</sup> Therefore, on one hand, the integration of tasks and competences has been achieved: water management competences belong to one centralised organisation of public administration that is capable to react in sudden situation and is an armed law enforcement authority, but on the other hand: the necessary expertise belong to another.

Local governments also have competences in water management; they even have local authority tasks so as they may dispose ownership of water and water facilities as a part of their basic property. Local governments have ultimate obligation to ensure drinking water supply and sanitation, but they also have competences for local water management and water damage control, flood and

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<sup>46</sup> Government Decree 223/2014 (IX. 4) on designation of authorities for water management and water protection and conservation, Art. 17–18.

<sup>47</sup> *Ibidem*, Art. 11 (a), (f), 12 (1) (c); (7) (b); (3) (c).

<sup>48</sup> Under the existing law, if the cooperation of a special advisory authority is demanded by law, its resolution is obligatory for the proceeding authority. Its assessment decision shall be binding upon the authority. Act CXL of 2004 on the General Rules of Administrative Proceedings and Services, Art. 44 (1)–(1a).

draining management.<sup>49</sup> This latter group of competences can also be found in the competence of the *Central Directorate of Water Management*.

### Water management at sub-basin level

Hungary is in the Tisza basin, the largest sub-basin of the DRB, thus collaborates under the sphere of ICPDR with States sharing the river: Ukraine, Romania, Slovakia, and Serbia to prepare the *RBMP*<sup>50</sup> but Hungary also initiated the *Tisza Water Forum* set up in 2001 with the aim of striving to decrease the risks caused by floods and actively participating in the *International Network of Basin Organisations*.<sup>51</sup>

Hungary has bilateral agreements in force with all the 7 neighbouring States in the subject of frontier waters. Joint commissions were set up with agents and their committees assisted by the *General Directorate of Water Management* for some aspects of flood prevention and the monitoring network related to water quality and quantity. Hungary has joint transboundary water committee.<sup>52</sup>

Good status of waters can only be reached by the coordination of all the water related issues like flood protection measures, sewage treatment, drainage, drinking water and fluvial transport issues of urban development. Therefore, the tasks of water areas were divided into 42 planning sub-unit plans under the 11 regional environmental and water directorates under the direction of the *Central Directorate for Water and Environment* (CDWE) and in co-operation with the regionally relevant national park directorates. Tasks and competences in these questions hardly depend on the lowest level of water management that is the local governments in Hungary as water supply and services so as the water related issues of settlement organisation belongs to this administrative unit.<sup>53</sup> In addition, water management competence and mainly the performance of tasks

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<sup>49</sup> Act LVII of 1995 on water management, Art. 4.

<sup>50</sup> Commission Staff Working Document. Member State: Hungary. Report from the Commission to the European Parliament and the Council on the Implementation of the Water Framework Directive (2000/60/EC) River Basin Management Plans. Brussels, 14.11.2012. COM(2012) 670 HU final, p. 3–4; 27.

<sup>51</sup> *Ibidem*, p. 23.

<sup>52</sup> See the list of treaties and committees: Határvízi együttműködés, 15 Nov. 2013, [www.ovf.hu/hu/hatarvizi-egyuttmukodes](http://www.ovf.hu/hu/hatarvizi-egyuttmukodes) (21.12.2015).

<sup>53</sup> I. Gazdag, *Rendeletalkotás a vízügyi ágazatban*, in: EU Integráció-Önkormányzatok III., ed. Csefkó F., Gálos Nyomdász Kft., Pécs 2002, p. 268–271.

is shared by a) local governments established on the principle of self-governance; b) Government Offices and their sub-regional district offices being the extended arm of the executive power, the Government regionally executing tasks of the *National Inspectorate for Environment, Nature and Water* (NIENW) and c) the *National Directorate General for Disaster Management* (NDGDM) and their regional organs also have authority. Altogether, there are many authorities to cooperate and collaborate inside national borders.

### **Public Participation in Water Management**

In the spirit of the principle of consultation of the public and engagement of interested parties, Hungary made the planning process of the RBMP multi-dimensional to harmonize ecological, technical, social and economic aspects. Prior to consultations, a strategy paper on the involvement of public into the planning process was developed, brochures and a guidebook on the methodology of public involvement and consultation in the WFD implementation process was issued and made available for stakeholders on the internet and in printed forms. In total, around 700 organisations, including professional state organisations, municipalities, civil organisations, economic sectors representative organisations, different kind of industrial and water management associations, scientific communities and the general public could contribute to draft the RBMP, and all the documents are available on site.<sup>54</sup> Altogether, formally, the criterion of public participation is fulfilled as there is no legal regulation on the role of information coming from this kind of source in normative decision-making.

### **Some questions still to be answered**

The river basin approach leads to a kind of shared responsibility thus the importance of transnational cooperation is increasing but not only on the planning and goal setting side.<sup>55</sup> It has always worked at roof level, difficulty comes when exalted principles and agreements shall be applied in practice and their enforcement requires operational steps. Incorporation of treaties and modification of domestic law is only a formal step on both sides of the border if it is

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<sup>54</sup> COM(2012) 670 HU, p. 5–6.

<sup>55</sup> WFD Art. 4, A.M. Keessen, J.J.H. van Kempen, H.F.M.W. van Rijswijk, *Transboundary River...*, p. 136.

not followed by direct and effective collaboration between those who execute the same rules. So, the key challenges are institutional and territorial fragmentation and badly managed multi-level governance, but also limited capacity at the local level, unclear allocation of roles and responsibilities and questionable resource allocation.<sup>56</sup> In 2013 the chief adviser of the *Hungarian Ministry of Rural Development* reported that bilateral commissions were proper frameworks for consultation and tools offered by different international agreements could well work together.<sup>57</sup> Indeed, treaties prevail anything the parties agreed upon from prior consultation to dispute settlement procedures but it does not substitute for direct operation between those authorities who are in charge for execution and taking actions on both sides of the border.

For example, prior to EU membership but in aware of bilateral and multilateral obligations, in 2000 the Tisza River was known for two major industrial accidents, in Baia Mare and Baia Borsa, Romania. Toxic pollution was released into the river from the Romanian shores and damaged Hungarian ecosystems which needed several years to recover. Even the European Court of Human Rights condemned the Romanian State for disrespecting private lives and homes, and more generally the right to enjoy a healthy and protected environment. The State, namely, had been aware of the risks and yet the operating conditions laid down by the Romanian authorities were insufficient to preclude the possibility of serious harm not to mention the ineffective actions taken after the accident. The State neither denied fulfilling the duty to guarantee the right of public to participate in the decision-making process concerning environmental issues and nor it ensured the efficient collaboration on transboundary matters.<sup>58</sup>

Today, the five Tisza countries are working on a joint management plan to implement the WFD and protect the sub-basin waters but nothing is said about co-work of the concerned authorities in case of emergency, for instance.<sup>59</sup> Similarly, in 2001 the foaming of the river Rába was detected on Hungarian territory due to the functioning of a leather-tanning factory in Wollsdorf, Austria.

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<sup>56</sup> OECD studies, p. 17; COM(2012) 670, p. 30.

<sup>57</sup> M.M. Galambosi, *Consultation on Planned Measures – Experience of Hungary* 2013, [www.unece.org/fileadmin/DAM/env/water/meetings/joint\\_bodies/presentations/4.3.Experience-Hungary\\_MGM\\_GENfinal\\_20130924\\_fin.pdf](http://www.unece.org/fileadmin/DAM/env/water/meetings/joint_bodies/presentations/4.3.Experience-Hungary_MGM_GENfinal_20130924_fin.pdf) (21.12.2015), p. 11.

<sup>58</sup> *Affaire Tătar c. Roumanie* (Requête no. 67021/01) Arrêt de 27 janvier 2009, ECtHR, p. 108, 112–113.

<sup>59</sup> Integrated Tisza River Basin Management Plan, ICPDR 2011, [www.icpdr.org/main/danube-basin/tisza-basin](http://www.icpdr.org/main/danube-basin/tisza-basin) (21.12.2014.), p. 18–19.



Joint commission activity, action plans, diplomatic discussions, NGO activities topped with some additional salt pollution several years later characterized this phenomenon, but it was only in 2011 when foaming was declared to be reduced. The problem even contributed to the adoption of a daughter directive of WFD with environmental quality standards for surface waters (2008/105/EC), or as the Hungarian called: *Lex Raba*, as it was hoped to be the solution for the pollution case, but it does not set quality standards for this kind of substances, so it could not contribute to the actual challenges, nor could international law. Due to informal cooperation, Austrian authorities finally prescribed extra filtering measures in the environmental licenses for the leather factories.<sup>60</sup> It was clear that until the State was not intended to act, no other tool had success to solve the problem.

WFD hold obligation for Member States to cooperate, but do not prescribe how to shape this cooperation.<sup>61</sup> In water management consultation is ensured at roof level of governance but authority collaboration on legal cases, permissions, official controls whose results may have transboundary effects and moreover, quick and efficace problem solution is not regulated. Hungary has bilateral treaties with all the neighbouring states on issues related to water management. Joint commissions are usually for diplomatic discussions and giving advices and guidelines, but they do not have public authority. They do not have legal capacity to act, do not participate in permitting procedures, do not elaborate binding decisions on polluters, have no executive power and do not engage in decision – making, so briefly: they just shift the roof level of cooperation to regional one. Issues, which cannot be dealt at Member State level, though, may be reported to the Commission,<sup>62</sup> although it is not really a suitable solution in the view of subsidiary principle and it also takes time which, in fact, is always critical in environment pollution cases.<sup>63</sup>

EGTC structure offers a kind of solution as it is an intensive form of cooperation between water authorities as it is preferred that local government bodies which may transfer duties to the EGTC and other concerned associations

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<sup>60</sup> A.M. Keessen, J.J.H. van Kempen, H.F.M.W. van Rijswijk, *Transboundary River...*, p. 133.

<sup>61</sup> *Ibidem*, p. 132.

<sup>62</sup> WFD Art. 12.1.

<sup>63</sup> G. Baranyai, *Transboundary Water Cooperation in the European Union: a Hydro-Political Gap Assessment*. VOP-1.1.1-2001-0001 project of the Ministry of Foreign Affairs and Trade of Hungary, 30 June 2015, p. 60.

are able to work together closely on the execution of the WFD. Even non-Member State bodies can join them. The weakness of operating power of EGTC is the lack of authority power that is enforcement power, the powers exercised by regional and local authorities as public authorities, notably police and regulatory powers cannot be transferred.<sup>64</sup> Only some procedural rights are available for them originating from the *Aarhus Convention*, ensures the right to information and participation in environmental related decision-making procedures for decentralised government bodies and environmental organisations. If these rights are not respected, they are entitled to take legal action to enforce them, even against a decision if they prove their interest and concerns.<sup>65</sup> For an EGTC, which definitely falls under the scope of the Aarhus Convention whose task is to cooperate on Danube related issues, it will not arise any difficulties.<sup>66</sup> Even though this right has not yet been converted into a directive, it should have been incorporated into domestic law of Danube States as all of them are parties to the Aarhus Convention.<sup>67</sup> Actually, none of the EGTCs with Hungarian participation focuses specially on water issues even though some of them indicate rivers in their names.<sup>68</sup>

It must be noted that Article 11.3 of WFD sets out a number of basic water related measures which should be controlled by prior authorisations, prior regulation and/or registration or prohibitions depending on the nature of the water management issue. However, not only the cooperation of authorities is not regulated but the mutual recognition of their administrative decisions is not ensured. Therefore, here comes the main challenge: the enforcement mechanism. The governance mechanisms for different types of water related permits have

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<sup>64</sup> EGTC Preamble, 16; 13. A.M. Keessen, J.J.H. van Kempen, H.F.M.W. van Rijswijk, *Transboundary River...*, p. 39–40.

<sup>65</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters Aarhus, Denmark, 25 June 1998. 2161 UNTS 447. Art. 4; 6–9. The EC is a Party to the Convention since May 2005. In 2003 two Directives concerning the first and second “pillars” of the Aarhus Convention were adopted; they were to be implemented in the national law of the EU Member States. See details A. Berthier, L. Krämer, *The Aarhus Convention: Implementation and Compliance in EU Law*, ClientEarth, June 2014, p. 7, 10–12.

<sup>66</sup> Aarhus Convention, Art. 2.

<sup>67</sup> A.M. Keessen, J.J.H. van Kempen, H.F.M.W. van Rijswijk, *Transboundary River...*, p. 47; see Parties, [www.treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=xxviii-13&chapter=27&lang=enb](http://www.treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xxviii-13&chapter=27&lang=enb) (13.01.2015).

<sup>68</sup> See EGTCs with Hungarian participation, [www.cesci-net.eu/egtc-foundations](http://www.cesci-net.eu/egtc-foundations) (21.12. 2015).

different mechanisms in the different Member States.<sup>69</sup> Member States are also required to determine penalties applicable to breaches of the WFD that are effective, proportionate and dissuasive.<sup>70</sup> Member States have a variety of approaches in organising enforcement activities across their territories, thus co-ordination is a key factor where enforcement activities are carried out by several authorities and at different administrative levels. It is noticeable that the local and regional authorities play a significant role in the enforcement of water permits not only in Hungary, as presented below, but elsewhere, too. In several Member States the enforcement authority is also the permitting authority and a number of Member States have specific environmental inspectorates, and the police forces are an additional enforcement institution.<sup>71</sup> Although no ‘one-size-fits-all’ solution can be found and there seems to be considerable fragmentation of the administrative structure which can make result achievement, conflict prevention and resolution more difficult, there could be a field for a systematic collaboration and cooperation mechanisms of public authorities also in water management just like in many other EU policies.

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<sup>69</sup> DRBMP, p. 40.

<sup>70</sup> WFD, Art. 23.

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